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Supreme Court, U.S.
FILED

NO. 931763 MAR 16 1994

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 19__

PETER E. HALL,

Petitioner,

versus

RAFAEL BENET MELENDEZ,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PUERTO RICO

PETITION FOR WRIT OF CERTIORARI

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37 pp

Questions Presented

(1) Whether an ex parte order of prejudgment attachment issued by the District Court of Puerto Rico violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution in light of the recent decision of the Supreme Court of the United States in Connecticutt v. Doehr, 500 U.S. 1, 115 L.Ed.2d 1 (1991), when, as in the instant case, no predeprivation hearing was provided, no showing of exigent circumstances was made by the respondent, no bond was required to be posted, the respondent had no pre-existing interest in the attached personal property, and the petitioner was deprived of the possession and use

of the attached property.

(2) Whether petitions for writ of certiorari submitted by the petitioner herein in the Superior Court of Puerto Rico and in the Supreme Court of Puerto Rico to question the constitutionality of an ex parte order of prejudgment attachment issued by the District Court of Puerto Rico, the court of first instance, are barred by the doctrine of laches, when the petitions were submitted before the date of trial set to hear the evidence in the underlying action to collect debt and, therefore, did not prejudice the respondent's interest in a timely resolution of the action.

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Jurisdiction

The judgment sought to be reviewed was entered by the Supreme Court of Puerto Rico on February 23, 1994.

The jurisdiction of this Court to review this case is invoked under 28 U.S.C. §1258.

Statutes Involved

The constitutional provisions and statutes involved in this case are set forth below:

(1) "...nor shall any person...nor be deprived of life, liberty, or property, without due process of law...." United States Constitution, Fifth Amendment, Due Process Clause.

(2) "...nor shall any State deprive any person of life, liberty, or property, without due process of law...." United States Constitution, Fourteenth Amendment, Due Process Clause.

(3) "Rule 56. Provisional Remedies

"56.1 General Principles

"In every action, before or after entering judgment, and on motion of claimant, the court may issue

any provisional order it may deem necessary to secure satisfaction of the judgment. The court may order the attachment, garnishment, the prohibition to alienate, claim and delivery of personal property, receivership, an order to do or to desist from doing any specific act, or it may order any other measure it deems necessary, according to the circumstances of the case. In every case in which a provisional remedy is sought, the court shall consider the interests of all the parties and shall adjudicate as substantial justice may require.

"56.2 Notice

"No provisional remedy shall be granted, modified, set aside, nor shall any action be taken thereon without notice upon the adverse

party and a hearing, except as provided in Rules 56.4 and 56.5.

"56.3 Bond

"A provisional remedy may be granted without the filing of a bond in any of the following cases:

"(1) If it appears from public or private documents, as defined by law, signed before a party authorized to administer oaths, that the obligation may be legally enforced....

"(2) ....

"(3) If a remedy is sought after judgment is entered.

....

"In all other cases, the court shall require the filing of a bond sufficient to secure all the damages arising from the remedy. However, a defendant or respondent may retain

the possession of the personal property attached by plaintiff or claimant by filing a bond for the amount the court deems sufficient to secure the value of said property. If the defendant furnishes a bond for the amount attached, the attachment will be left without effect.

"56.4 Attachment or prohibition to alienate

"If the requirements of Rule 56.3 have been met, the court shall issue, on motion ex parte of a claimant, an order of attachment or of prohibition to alienate. The attachment and prohibition to alienate real property shall be effected by recording them with the Registry of Property and notifying the defendant. In case

of personal property, the order shall be carried out by depositing the personal property in question in court or with the person designated by it under the claimant's responsibility...." Puerto Rico Rules of Civil Procedure of 1979, 32 L.P.R.A. App. III, Rule 56.

Statement of Facts

The present controversy arises from an ex parte order of prejudgment attachment issued August 3, 1992, by the District Court of Puerto Rico, the court of first instance, to enforce prospectively the judgment in an action to collect an alleged debt resulting from a rental contract upon commercial property, and executed September 3, 1992, by seizure of the petitioner's motor vehicle. At the time of issuance of the ex parte order, no complaint in this action had been served upon the petitioner, and no judgment had been rendered regarding liability for the alleged debt. Soon after the seizure, the petitioner questioned in the District Court, the court of issuance, the constitutionality of the

ex parte order, and in a postdeprivation hearing held December 4, 1992, the District Court affirmed the ex parte order. Prejudgment attachments are authorized generally in Puerto Rican law by the provisions of Rule 56 of the Puerto Rico Rules of Civil Procedure. The petitioner has questioned, and continues to question, the constitutionality of the ex parte order, on the grounds that no predeprivation hearing was provided, no showing of exigent circumstances was made by the respondent, no bond was required to be posted, the respondent had no pre-existing interest in the attached personal property, and the petitioner was deprived of the possession and use of the attached property.

The District Court denied by order of March 3, 1993, the respondent's motion

for summary judgment in the underlying action to collect debt and scheduled subsequently a trial to hear the evidence in this action for February 9, 1994.

The petitioner submitted October 29, 1993, in the Superior Court of Puerto Rico, in its capacity as an intermediate court of appeal, a petition for writ of certiorari to question the constitutionality of the ex parte order. After denial by the Superior Court of the petition, for the reason of laches, the petitioner submitted December 6, 1993, in the Supreme Court of Puerto Rico a similar petition for writ of certiorari, which was denied by judgment entered February 23, 1994, also for the reason of laches.

The present petition for writ of certiorari to the Supreme Court of Puerto Rico raises before the Supreme Court

of the United States the issue of the constitutionality of the ex parte order under the Due Process Clause of the Fourteenth Amendment to the United States Constitution. The petition raises as well the issue of the applicability of the doctrine of laches to the previous petitions, on the grounds that these were submitted before the date set for trial in the underlying action to collect debt, and, therefore, did not prejudice the respondent's interest in a timely resolution of the action.

The trial on the merits of the action was held in the District Court as scheduled on February 9, 1994. No judgment has been rendered as of the date of this petition for writ of certiorari.

Argument

Question 1:

The present petition for writ of certiorari questions the constitutionality under the Due Process Clause of the Fourteenth Amendment to the United States Constitution of the ex parte order herein issued August 3, 1992, by the District Court of Puerto Rico in light of the recent decision of the Supreme Court of the United States in Connecticutt v. Doehr, 500 U.S. 1, 115 L.Ed.2d 1 (1991). In Doehr, supra, the majority of the Court examined a state statute authorizing prejudgment attachment "in light of current practice," finding that "a survey of state attachment provisions reveals that nearly every State requires either a preattachment hearing, a showing of

some exigent circumstance, or both, before permitting an attachment to take place." 115 L.Ed.2d 1, 17. The majority opinion concluded that the state statute in question, "by failing to provide a preattachment hearing without at least requiring a showing of some exigent circumstance, clearly falls short of the demands of due process." 115 L.Ed.2d 1, 18. A minority of the Court consisting of four of the Justices extended the survey of "current practice" to consider the requirement of a bond, finding that most states currently require the posting of a bond and concluding that "neither a hearing nor an extraordinary circumstance limitation eliminates the need for a bond, no more than a bond allows waiver of these other protections....due process generally requires all of the above." 115 L.Ed.2d

1, 21. The concurring opinion of the Chief Justice, as well as the majority opinion, alluded to the factors of a pre-existing interest in the attached property and the deprivation of the possession and use of the attached property, while not concluding that the presence or absence of these will meet due process requirements. In summary, the Doehr opinion held, in order to satisfy the Due Process Clause of the Fourteenth Amendment, that state statutes authorizing prejudgment attachments must at least provide a predeprivation hearing or require a showing of exigent circumstances; moreover, other factors, such as the requirement of a bond, may be relevant "in the light of current practice" in determining that state statutes satisfy due process.

The holding in Connecticutt v. Doehr, supra, was based on the line of often cited decisions of the Supreme Court of the United States regarding the due process requirements applicable to prejudgment attachments. North Georgia Finishing v. Di-Chem, Inc., 419 U.S. 601, 42 L.Ed.2d 751 (1975); Mitchell v. W. T. Grant Co., 416 U.S. 600, 40 L.Ed.2d 406 (1974); Fuentes v. Shevin, 407 U.S. 67, 32 L.Ed.2d 556 (1972); Sniadach v. Family Finance Corp., 395 U.S. 337, 23 L.Ed.2d 349 (1969). Moreover, Connecticutt v. Doehr, supra, has been cited by the Supreme Court of the United States in the recent decision in United States v. Good Real Property, 126 L.Ed.2d 490 (1993), wherein it was held that a seizure of real property pursuant to an ex parte warrant violated the Due Process Clause of the

Fifth Amendment, when, in the absence of exigent circumstances, the court issuing the ex parte warrant did not first afford to the owner of the attached property prior notice and an opportunity to be heard.

The rule in Connecticutt v. Doehr, supra, has been cited by the Supreme Court of Puerto Rico in recent opinions involving the issue of the constitutionality of Rule 56 of the Puerto Rico Rules of Civil Procedure of 1979, 32 L.P.R.A. App. III. Feliciano v. Toste, 93 JTS 161 (1993); Rivera Rodriguez & Co. v. Stowell, 93 JTS 111 (1993). Moreover, the issue of the constitutionality of the aforementioned Rule 56 has been raised recently before the United States District Court for the District of Puerto Rico. Matter of Unanue-Casal, 144 B.R. 604 (D. Puerto

Rico 1992).

Question 2:

As a matter of appellate procedure, the present petition for writ of ceriorari questions the applicability of the doctrine of laches under the precedents of the Supreme Court of Puerto Rico to the previous petitions for writ of certiorari submitted in the Superior Court of Puerto Rico and in the Supreme Court of Puerto Rico. The general rule regarding dismissal of petitions for reason of laches involves two elements: (1) an unjustified delay in the submission of the petition and (2) the prejudice that may result to other parties under the circumstances. Torres v. Policia de Puerto Rico, 117 D.P.R. 204 (1986); Dumont v. Inmobiliaria Estado, Inc., 113 D.P.R. 406 (1982); Pueblo v. Tribunal Superior, 81 D.P.R.

904 (1960). When the delay does not prejudice anyone or the resulting prejudice is slight, if compared with the harm that would be suffered by the petitioner or the public in the event that the writ does not issue, the time elapsed must be great in order that there occur equitable laches. 81 D.P.R. 904, 914.

For the reasons set forth above, the petitioner herein respectfully requests that the writ of certiorari issue to review the judgment of the Supreme Court of Puerto Rico in this case entered February 23, 1994.

Appendix

Copies of the order of attachment dated August 3, 1992, of the District Court of Puerto Rico, San Juan Part; of the judgment dated November 9, 1993, of the Superior Court of Puerto Rico, San Juan Part; and of the order dated February 23, 1994, of the Supreme Court of Puerto Rico sought to be reviewed in this case are attached to this petition below:

IN THE DISTRICT COURT OF PUERTO RICO

SAN JUAN PART

RAFAEL BENET MELENDEZ	:	CIVIL NUM.
PLAINTIFF	:	92-10289 (503)
VS	:	RE:
PETER E. HALL	:	ACTION TO
DEFENDANT	:	COLLECT DEBT
.....	:	

O R D E R

Having seen the motion requesting the securing of satisfaction of judgment and having examined the complaint filed in the present case, the Court orders the securing of the judgment that may be rendered in favor of the plaintiff, by means of the attachment of personal and real property of the defendant sufficient to cover the amount claimed.

The plaintiff is exempted from the posting of a bond for the reason that the liability of the defendant appears in authentic documents, the judgment and the file of case Civil Num. 92-1170 (505).

The clerk is ordered to issue the necessary writs to carry out the present order and in the event of the attachment of personal property, there is designated as depositary the person whose residential and business address and telephone is as follows: Enrique Velez, Apt. B-6, Street #2, Viromar, Luquillo, P.R. 00773, Tel. 889-2701, with whom shall be deposited the personal property that may be attached, as a result of this order, under the responsibility of the claimant.

RECORD AND NOTIFY.

Given in San Juan, P.R., on August 3, 1992.

/s/ YVONNE FELICIANO ACEVEDO
DISTRICT JUDGE

[petitioner's translation]

IN THE SUPERIOR COURT OF PUERTO RICO

SAN JUAN PART

RAFAEL BENET MELENDEZ	*	CIVIL NUM:
Plaintiff-~~Respondent~~	*	KPE93-684
vs.	*	(~~904~~)
PETER E. HALL	*	RE:
Defendant-Petitioner	*	CERTIORARI
	*	(Certiorari to
	*	review Order
	*	of District
	*	Court, Civil
	*	Num. 92-1170)
	*	

JUDGMENT

To the foregoing petition of Certiorari, DENIED for laches.

RECORD AND NOTIFY.

Given in San Juan, Puerto Rico, on November 8, 1993.

/s/ ARNALDO LOPEZ RODRIGUEZ
SUPERIOR JUDGE

CERTIFIED:
PAULITA SANTIAGO CARTAGENA
CLERK OF THE COURT

BY:
ASSISTANT CLERK

NOTIFICATION OF JUDGMENT

The clerk who subscribes gives notice to you that this court rendered judgment in the above-captioned case on date of November 8, 1993, that it has been duly recorded and filed in

the record of this case, from which you may further inform yourself of the terms of the same.

And, you being or representing the party affected by the judgment, from which you may present an appeal, I direct to you this notice, having filed in the record of this case a copy of it on date of November 9, 1993.

San Juan, Puerto Rico, on November 9, 1993.

/s/ Paulita Santiago Cartagena
Clerk

By: Maria Padilla
Assistant Clerk

[petitioner's translation]

IN THE SUPREME COURT OF PUERTO RICO

Rafael Benet Melendez	*	
Plaintiff-Respondent	*	Num.
v.	*	CE-93-740
Peter E. Hall	*	
Defendant-Petitioner	*	Certiorari
	*	

ORDER

In San Juan, Puerto Rico, on February 18, 1994.

Essentially, the petitioner maintains in his allegations of error that the attachment ordered of his automobile on August 3, 1992, is unconstituional in light of the rule of jurisprudence expressed by this Court in Rivera Rodriguez v. Stowell, opinion of June 30, 1993. The petitioner

maintains that said attachment order was issued without prior notice, without the holding of a hearing, and without the posting of a bond. He sets forth that said attachment was not in conformance with law, since in the action of eviction his liability for the alleged debt was not adjudicated.

On date of August 3, 1992, the District Court, San Juan Part, ordered the attachment of the petitioner's automobile in case Civil Num. 92-10289 (501), concerning an action to collect debt. Not in agreement with the attachment, the petitioner submitted a Motion for Dissolution of Attachment and a Motion for Relief from Judgment and New Trial in case Civil Num. 92-1170 (502) concerning eviction for failure to pay.

It appears from the record before

us that on October 2, 1992, an urgent evidentiary hearing was held in order to discuss the objections to the attachment made by Atty. Hall. Subsequent to the holding of said hearing, the District Court declared, by order of December 22, 1992, that the attachment had been carried out in conformance with law. While the proceedings continued in the action to collect debt, it was not until October 29, 1993, that Atty. Hall presented a petition of certiorari before the Superior Court, San Juan Part, requesting the review of the order entered December 22, 1992. Having elapsed ten (10) months since the entering of said order, the court denied the petition for reason of laches.

The petitioner did not set forth any reason before the Superior Court,

San Juan Part, as neither does he before us, to justify his delay in seeking review of the order entered by the District Court affirming the attachment. Before said neglect it is unavoidable to conclude that the Superior Court did not commit error in dismissing, for reason of laches, the petition of certiorari presented before said court to review the mentioned order. See: Dumont v. Inmobiliaria Estado, Inc., 113 D.P.R. 406 (1982); Pueblo v. Tribunal Superior, 81 D.P.R. 904 (1960).

In accordance with the above expressed, the issuance of the requested writ is denied.

So decided the Court and certifies the Clerk of the Court. Associate Justices Rebollo Lopez and Hernandez Denton took no part.

/s/ Francisco R. Agrait Llado
Clerk of the Court

NOTIFICATION

I certify that in relation with the petition of certiorari the Court entered the accompanying order.

San Juan, Puerto Rico, on February 23, 1994.

/s/ Francisco R. Agrait Llado
Clerk of the Court

[By:]
Assistant Clerk

[petitioner's translation]

Respectfully submitted,

Peter E. Hall

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March 11, 1994